

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0004
Use Tax for the Years 2000 - 2002**

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ISSUE

I. Use Tax—Equipment used to provide services

Authority: IC 6-8.1-5-1(b); IC 6-2.5-5 *et seq.*

Taxpayer protests the imposition of use tax upon the purchase of two infrared thermal cameras used to inspect new construction buildings.

II. Adjustments to the audit assessment

Taxpayer requests the Department to review the adjustments made to the assessments to be certain that the items that were agreed to come off the assessment have been removed.

Authority: IC 6-8.1-5-1(b).

STATEMENT OF FACTS

Taxpayer inspects completed new construction buildings. The Department audited Taxpayer and issued use tax assessments. Taxpayer protested and the file was transferred to Protest Review. During protest review, Taxpayer provided documentation to rebut some of the audit items and the Department found adequate basis to remove these audit items. However, the use tax assessment remained concerning the purchase of two infrared thermal cameras used to inspect new construction buildings. Taxpayer requested a hearing to argue that the two cameras were exempt from the imposition of sales and use tax.

I. Use Tax—Equipment used to provide services

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Taxpayer came to the protest hearing forwarding legal arguments that its purchase and use of two infrared thermal cameras were exempt from sales and use tax under IC 6-2.5-5 *et seq.*

However, the specific exemption statutes named by Taxpayer apply to operations engaged in producing tangible personal property. Taxpayer stated that it provides inspection services and does not produce any tangible personal property eligible under the exemption provisions in 6-2.5-5 *et seq.* After a discussion at the hearing with Taxpayer, Taxpayer withdrew its protest position, stating that it recognized there are no exemption statutes that apply to support its protest concerning the two cameras.

FINDING

Because Taxpayer withdrew its protest and conceded that use tax is due, this protest issue is moot; the use tax assessment on the two infrared thermal cameras is upheld.

II. Adjustments to the audit assessment

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

Taxpayer was audited and an assessment was issued. Taxpayer protested the assessment and the file went to Protest Review. A representative of the Department reviewed the documentation submitted by Taxpayer. Based upon the sufficiency of the evidence, the Department agreed to remove several items from the assessment. A supplemental audit report was issued. At the hearing, Taxpayer stated that it recently had received assessment notices that did not fully reflect the agreed adjustments. Taxpayer requested that the Department adjust the assessment to accurately reflect the remaining tax liability.

At the hearing, Taxpayer did concede that the assessments for use tax for magazine subscriptions and trade show items were taxable.

FINDING

The file is returned to Audit for it to determine whether the items agreed to be removed from the audit assessment actually have been removed. Audit is to confirm that the outstanding liabilities are correctly billed.